



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,210	01/16/2002	Jeffrey T. Mannion	11578-006001	9085

26161 7590 06/09/2005

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON, MA 02110

EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT PAPER NUMBER

3634

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/052,210

Applicant(s)

MANNION ET AL.

Examiner

Jennifer E. Novosad

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004 and 24 March 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,10,12,14,15,28,29,31,32 and 68-112 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3,10,12,14,15,28,29,31,32 and 68-112 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 14 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 03-24-2005.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

Art Unit: 3634

DETAILED ACTION

This final Office action is in response to (a) the amendment filed June 14, 2004 by which claims 102-112 were added, and (b) the election and amendment filed March 24, 2005 by which claims 1-3, 10, 12, 14, 15, 28, 32, 75, 76, 79, 80, 82, 85, 86, 88-102, 104-112 were amended.

Election/Restriction

Because of applicant's amendment filed March 24, 2005, the restriction requirement mailed October 19, 2004 is hereby withdrawn, since all claims now are drawn to one invention. Also, all claims pending, i.e., 1-3,10,12,14,15,28,29,31,32 and 68-112, are drawn to the elected species, i.e., Figures 22 and 22A, elected *with* traverse on November 3, 2003.

It is noted that since a restriction requirement was made after the amendment of June 14, 2004 was filed, claims 102-112 have not been previously examined.

Drawings

The drawings were received on June 14, 2004. These drawings are approved.

Claim Objections

Claims 73 and 112 are objected to because of the following informalities:

In claim 73, line 2 and claim 112, line 2, it is *suggested* that "said" be deleted.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 92, 94-96, 101-103, 105, 107 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 92 recites the limitation "said opening" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is noted that "opening" was deleted from line 3 of claim 88.

As previously indicated, the limitation "as formed" in claim 94 renders the claim indefinite since it is unclear what is meant by this phrase. See also claim 102.

As previously indicated, the term "relatively short" in claim 95 is a relative term which renders the claim indefinite. The term "relatively short" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 96 recites the limitation "the terminal end" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claims 101, 103, 105, and 107 recite the limitation "the suspension element" in line 2. There is insufficient antecedent basis for this limitation in the claims. In view of line 9 of claim 1, "suspension" should be changed to --suspending--.

Claim 102 is rendered indefinite since the structural relationship between the ring portion and the "parallel limiting planes" and the suspension device and container is unclear.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 10, 12, 14, 15, 28, 29, 31, 32, and 73-112 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,007,231 (Ingemann '231).

Ingemann '231 discloses a device for a container (10) *constructed to be united with a* predetermined container with contents whereby the container has a surrounding wall (at 11) extending from a bottom to an upper rim formation (at 13) at a top opening and the device defining a removable (the device (20) is removable from the container) suspension device, i.e., a suspender, with a ring portion (at 23) *constructed to* extend over and be joined with the upper rim formation (13) of the container (10); the device further comprising an inwardly positioned suspending element (at 50) integrally, i.e., once formed the elements are considered to be integral, extending inwardly of the ring portion (23) from a proximal region (near 52) in supporting relation with the ring portion (13) to a distal end (at 51 in Figure 8) and the suspending element located to allow the container to be suspend at a tilted orientation if the container is suspended in a rack; the suspending element further comprising an opening (in 51) through which a support *can be* inserted and being of *substantially* constant thickness along its length; the suspender being of sheet form and being free-ended and being integrated with the structure (23) so that it is deflectable from an as-formed position (see Figure 5) to a raised

Art Unit: 3634

position (see Figure 6); a central panel (40 – see column , lines 23-25) made of foil, i.e., a film; *with respect to claims 28, 93, and 104*, the proximal region of the suspending element is offset relative (see Figures 10a-10b) to an axis of the ring portion (13A) sufficiently to impart a substantial tilt thereto; the mouth of the container being wider than the bottom; *with respect to claim 92*, the central panel (40) is attached along an underside of the suspension device (see Figure 7); *with respect to claims 95, 96, and 98*, the suspending element comprises a main body with a root region, whereby the main body has a leg portion with a width and the terminal end of the suspending element has a head with an opening and the head is wider than the leg portion .

It is noted that the claims do not positively require that the container be suspended nor do the claims positively require that the container be suspended by the suspending element. *Thus*, Ingemann '231 is considered to be capable of allowing the container to be suspended and to be suspended from the suspending element when desired.

The claims differ from Ingemann '231 in requiring: (a) the ring portion of the suspension device to not be disturbed when united with the rim formation of the container and when suspending force is applied to the distal end portion thereof (claim 1, see last three lines); (b) the suspending element to be flexible (claims 3, 15, 89, 95, and 99); (c) the ring portion of the suspending device to be formed as a portion of a thermoplastic unit (claims 10, 29, 91, and 102); (d) the container to have specific dimensions (claim 75) and the suspending element to have specific dimensions (claims 101 and 107); (e) the central panel to be paper (claims 77 and 83); (f) the central panel to carry printing (claims 80, 86, and 111); (g) the central panel to be clear (claims 81, 87, and 110); (h) the width of the leg portion to be less than the width of the root

Art Unit: 3634

region (claim 97); and (i) the ring portion to have a frictional fit (claim 108) or a snap fit (claim 109) with the rim formation;

With respect to (a), although Ingemann '231 does not explicitly state that the ring portion is not disturbed when united with the container and when a suspending force is applied to the distal end, it is noted that the suspending force and the level of disturbance are considered to be relative. *Accordingly*, it would have been obvious to one of ordinary skill in the art at the time the invention was made that a certain level of suspending force would not disturb the specified elements, as determined through experimentation, thereby allowing for increased support and securement.

With respect to (b) and (c), although Ingemann '231 discloses the suspending device to be of a rigid plastic material (see column 4, lines 7-27), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the device as a flexible thermoplastic device, for ease in economy and manufacture and ease in use.

With respect to (d), although Ingemann '231 does not disclose the specific container required by the claims, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided such a container and element for ease in use.

With respect to (e), although Ingemann '231 does not disclose a central panel made from paper, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a central panel made from paper for increased protection to the contents of the package.

With respect to (f) and (g), although Ingemann '231 does not disclose a clear central panel or a central panel having printing, it would have been obvious to one of ordinary skill in

Art Unit: 3634

the art at the time the invention was made to have provided a clear central panel or a central panel with printing for ease in identifying the container contents and ease to the consumer.

With respect to (h), although Ingemann '231 does not show the width of the leg portion being less than the width of the root region, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have made the element having the specified width relationships, for ease in economy.

With respect to (i), although Ingemann '231 does not explicitly state that the fit of the ring portion (23) to the rim formation (13), which is defined as an exterior surface of the container, is friction or snap fit, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the fit would be a friction and/or snap fit, for increased structural support and stability.

Claims 68-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ingemann '231 as applied to claims 1-3, 10, 12, 14, 15, 28, 29, 31, 32, and 73-112 above, and further in view of U.S. Patent No. 1,095,045 (Timberlake '045).

Ingemann '231 discloses the device as advanced above.

The claims differ from Ingemann '231 in requiring a display rack (claim 68) defining a horizontal rod (claim 69), two vertically aligned tiers of rods (claims 70 and 72), a rod in a V-shape having diverging sections (claims 71 and 72). It is noted that the claims do not positively require that the devices be suspended from a rack.

Timberlake '045 teaches a display rack defining a horizontal rod (at 15), two vertically aligned tiers of rods (at 7) whereby the rods are V-shaped (7, 9, and 8).

Art Unit: 3634

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provided a rack so that the devices could be suspended thereby allowing for organizational capacity of the devices and ease to the consumer.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment deleting "flexible" from line 9 of claim 1, and by re-writing all other previously independent claims into dependent form depending from claim 1.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

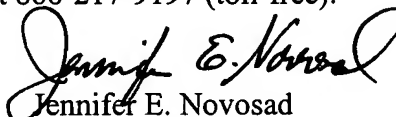
Art Unit: 3634

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832.

The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
June 7, 2005